

FILE NO: PSC2019-05538

TITLE: PUBLIC PROPERTY ENCROACHMENT POLICY

OWNER: ASSETS SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this policy is to provide Council's position on encroachment of private assets on Council's land such as road reserves and public community or operational land.
- 1.2 This policy is linked to Key Direction P2 Infrastructure, facilities and connections – Our community's infrastructure and facilities are safe, convenient, reliable and environmentally sustainable.

2. CONTEXT/BACKGROUND:

- 2.1 Council owns and manages a large portfolio of land for the community and public to use. Council recognises that some adjoining private property owners undertake work to beautify and maintain Council's land to the mutual benefit of each party. In some cases these beautifications extend beyond maintenance and result in private assets being placed on Council land.
- 2.2 In some cases this results in a sense of ownership and pride that benefits Council and the public.
- 2.3 In other cases this beautification and encroachment on Council land may have a negative impact to the community, public safety, environment and amenity of the land.
- 2.4 The extent of the encroachment and the organisation's risk appetite will determine Council's ability to accept or deny each encroachment and any further action required.

3. SCOPE:

- 3.1 This policy relates to encroachment on Council's road reserves and public community or operational land.
- 3.2 This policy does not relate to:
 - a. Parks and roadside memorials.
 - b. The encroachment on Council's commercial property portfolio.
 - c. Items relating to outdoor trading/activities on Council land.

- d. Bus shelter advertising.
- e. The Foreshore Vessel Storage Policy.
- f. Private utilities that are covered under Section 611 of the Local Government Act 1993.
- g. Any other activity or use that is approved or exempt from requiring prior approval. These are covered under other adopted Council policies, fees and charges or legislation.

3.3 Where an existing or proposed encroachment results in:

- a. A compromise to the integrity of natural and/or cultural values.
- b. Prevention of public use or access.
- c. Impediment of fire management.
- d. The detraction from aesthetic appearances, biodiversity conservation values, and/or character of the area.
- e. The diversion and/or encumbrances of Council resources or assets.
- f. The jeopardy of public safety.
- g. The social inequity.
- h. Council's legal liability.
- i. Traffic and pedestrian safety.
- j. Negative impediment of drainage or of natural coastal processes.

Council may either not approve the proposed encroachment or order the person who undertook the existing encroachment to remove/make good the area to Council's satisfaction. These works and any associated approvals will be at the cost of the person who has undertaken or benefits from the encroachment.

3.4 If works are not undertaken by the order date Council may take action and invoice the owner of the encroachment to recoup costs.

3.5 Should approval be granted, these works and any associated approvals will be at the cost of the applicant is requesting the encroachment works.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Private assets	Include but not limited to - water features, steps, retaining walls, fencing or physical barrier, gazebos, garden beds, and landscaping, vegetable patches, seating and furniture, BBQs, fire pits, boat ramps, storage equipment, structures (i.e. decking, patios, concrete/paving works).
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Public community and operational land	Relates to lands defined as community or operational land held/managed by Council. Does not include Council owned commercial and investment lands.
Community Land	Land owned and managed by Council.
Council managed Community Land	Land managed by Council (ie Crown Trust).
Operational Land for Community Purposes	Operational land owned and managed by Council for community purposes.
Road Reserve	Land owned and managed by Council.
Council managed Road Reserves	Land managed by Council (i.e. TfNSW roads).

5. STATEMENT:

- 5.1 Council acknowledges that suitable encroachments may have benefits to residents, the community, public and Council by providing a sense of place, ownership, pride and increased maintenance.
- 5.2 Proposed works are to be applied through Council's 'Works on Community Land Application' or Roads Act 1993 approval process.
- 5.3 Encroachment may take many forms and each one will be assessed on its merits, benefits to the public and the organisations risk appetite.
- 5.4 Council may revoke previous approvals as new information become available or if the change of use prevents the space from being used for which it was intended.
- 5.5 Any approval for private assets transfers to the new owners upon sale of the adjoining property.
- 5.6 The applicant of the encroachment asset/adjoining property owner is responsible to remove and restore the private asset should Council or any other public authority require access through the subject area.

6. RESPONSIBILITIES:

- 6.1 Community Assets Coordinator for community land.
- 6.2 Civil Assets Manager for road reserves.

7. RELATED DOCUMENTS:

- 7.1 Roads Act 1993 (NSW).
- 7.2 Local Government Act 1993 (NSW).

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2019-05583	EDRMS record No.	TBC
Audience	Mayor and Councillors, Council Staff and Community.		
Process owner	Community Assets Coordinator for community land. Civil Assets Planning Manager for road reserves. Property Services Section Manager for Operational land.		
Author	Asset Section Manager		
Review timeframe	4 years	Next review date	TBC
Adoption date	14 July 2020		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	14 July 2020	Assets Section Manager	New policy was adopted.	133
2	14 June 2022	Assets Section Manager	Reviewed and updated into the Policy template. 3.2e Updated name of policy. Removed "Dinghy" and replaced with "Foreshore Vessel Storage". 3.3d Added "biodiversity conservation values". 3.3i Added the word "safety". 3.3j Added "Negative impediment of drainage or of natural coastal processes."	148

Version	Date	Author	Details	Minute No.
3	TBC	Assets Section Manager	<p>Reviewed with changes.</p> <p>1.2 – delete ‘our Facilities’. Add ‘facilities and connections’.</p> <p>3.2 c – reworded to better reflect purpose.</p> <p>3.3 – add ‘or benefits from’.</p> <p>4.1 Definition – delete ‘RMS’. Add ‘TfNSW’.</p> <p>6.1 - Update to Title</p> <p>7 - Related documents updated to reflect owners.</p> <p>Amended review timeframe to 4 years in accordance with Council’s policy and management directive review process.</p>	TBC